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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,260	07/12/2000	KENGO AKIMOTO	001560-381	7267

7590 02/11/2003

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MARX, IRENE

ART UNIT	PAPER NUMBER
1651	16

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/530,260	Applicant(s) Akimoto et al.
	Examiner Irene Marx	Art Unit 1651
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<p>THE REPLY FILED <u>Jan 27, 2003</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>		
THE PERIOD FOR REPLY [check only a) or b)]		
<p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>		
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>		
<p>1. <input checked="" type="checkbox"/> A Notice of Appeal was filed on <u>Jan 27, 2003</u>. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p>		
<p>2. <input checked="" type="checkbox"/> The proposed amendment(s) will not be entered because:</p>		
<p>(a) <input checked="" type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</p>		
<p>(b) <input checked="" type="checkbox"/> they raise the issue of new matter (see NOTE below);</p>		
<p>(c) <input checked="" type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p>		
<p>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p>		
<p>NOTE: <u>see attachment</u></p>		
<p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____ _____</p>		
<p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p>		
<p>5. <input checked="" type="checkbox"/> The a) <input type="checkbox"/> affidavit, b) <input type="checkbox"/> exhibit, or c) <input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see attachment</u> _____</p>		
<p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p>		
<p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a) <input checked="" type="checkbox"/> will not be entered or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p>		
<p>Claim(s) allowed: <u>none</u></p>		
<p>Claim(s) objected to: <u>none</u></p>		
<p>Claim(s) rejected: <u>11, 12, 17-22, and 27-37</u></p>		
<p>Claim(s) withdrawn from consideration: <u>1-10, 13-16, and 23-26</u></p>		
<p>8. <input type="checkbox"/> The proposed drawing correction filed on _____ is a) <input type="checkbox"/> approved or b) <input type="checkbox"/> disapproved by the Examiner.</p>		
<p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</p>		
<p>10. <input type="checkbox"/> Other:</p>		
IRENE MARX PRIMARY EXAMINER ART UNIT 1651		

Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the addition of "wherein said lipid is obtainable by extracting microbial cells with an organic solvent, and wherein the percentage of eicosapentaenoic acid to the total fatty acid acids in said lipid is 0.5% by weight or less", in claim 11, including new issues under 35 U.S.C §112 and of new matter. New issues are also raised by applicants' indication that claims 12, 18, 21 and 22 are cancelled and that claims 11, 17, 21, 27, 34 and 35 are amended.

Response to Arguments

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

It is noted that a declaration regarding deposit will be provided as soon as possible. Applicant's remarks do not overcome the rejection made.

The arguments presented pertain to claims that are not entered. The rejections are maintained for the reasons of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.

Irene Marx

Irene Marx
Primary Examiner
Art Unit 1651